

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 123 of 1982

in

APPEAL FROM ORDER No 24 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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SIKANDARKHAN HASANKHAN PATHAN

Versus

CHARITY COMMISSIONER

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Appearance:

MR RN SHAH for Appellant

MR MB GANDHI for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 02/12/98

ORAL JUDGEMENT [PER : B.C.PATEL, J ]

Learned Single Judge of this Court summarily

dismissed the Appeal from Order No. 24/82 and hence the appellant- original opponent before the trial Court has preferred this Letters Patent Appeal.

From the record, it transpires that the Charity Commissioner - respondent herein moved learned City Civil Judge by submitting Application No. 740/80 as

the appellant herein tried to obstruct illegally. It transpires that the Charity Commissioner filed Civil Suit No. 797/67 in City Civil Court at Ahmedabad against the trustees of Abdul Razak Roja and Mosque Trust as also Saiyed Qaimuddin and Chunilal Jagannath Upadhyay for removal of the trustees of the said trust and also for obtaining possession of a plot of land bearing survey No.5010 situated near Abdul Razak Roja in Dabgarwad, Dariapur in the city of Ahmedabad, on the ground that the said trustees have acted against the aforesaid public trust and that sale-deed executed by them in favour of Shri Chunilal Jagannath Upadhyay was bad and illegal. The suit was decreed as prayed for and for possession, Execution Application NO. 1172/77 was filed in the City Civil Court for execution of the decree. It transpires that during the pendency of the proceedings, said Shri Chunilal Jagannath Upadhyay transferred a small piece of land bearing survey No.5012 to one Abdul Latif Mohmadbhai Chhatriwala and in turn he transferred the same to the present appellant. It is alleged that same was transferred with survey No. 5010 which is admittedly a trust property. Learned Single Judge who disposed of the said application, has pointed out in para-2 as to how learned advocate appearing for the appellant has not remained present before the Court. We reproduce para-2 herein below:-

" Arguments in this matter began at about 12.45 p.m. and they continued till this Court rose for recess at about 2.00 p.m. Shri V.G.Shelat, the learned advocate for the opponent herein, was on his legs at the time when this Court rose for recess today. He assured me that he would resume the arguments in the second sitting. He, however, requested accommodation

for about 20 to 30 minutes so that he could adjust his other matters in other Courts. I acceded to this request. Shri Shelat has, however, not turned up till 3.50 p.m. after recess. The opponent is present and he informs that his advocate is busy conducting a case in a Small Causes Court. One Shri G.K.Patel has

appeared and he also informs me that Shri V.G. Shelat has been conducting a case in a Small Causes Court. I think this is very unfair on the part of Shri V.G.Shelat. He cannot be permitted to shirk from his responsibility to proceed with a part-heard matter particularly when he assured this Court to the effect that he would proceed with the matter in the second sitting."

When Advocate is arguing the matter in other Court then City Civil Court, he need not be accommodated in a City Civil Court. In the establishment of City Civil Court, if Advocate is arguing the matter before the City Civil Court and his another matter is called out in another City Civil Court, then he is ordinarily accommodated either on a purshish or on oral request, but it is not proper to say that even if he is arguing before some different forum ( viz. Small Cause Court in the instant case ), he must be accommodated. In the instant case, learned Judge heard arguments till recess. However, when the Court reassembled after recess, learned advocate for the appellant did not bother to remain present before the Court and that too in a part-heard matter and, therefore, there was no other alternative for the Court but to proceed with the matter. Learned Judge deciding the application in the trial Court has pointed out the circumstances as to why the evidence of the present appellant is required to be discarded. Despite this, even on merits, the learned Judge pronounced the order against the present appellant and in favour of the Charity Commissioner. It is against this order, Appeal

From Order was preferred by the appellant which is not maintainable in view of S.104(2) of the Code of Civil Procedure. Division Bench of this Court in the case of Madhusudan Vegetable Products v/s Rupa Chemicals & Ors., reported in 1986 GLH 93, after considering various decisions, held that considering S.104 of the Code of Civil Procedure and Clause :15 of the Letters Patent, Letters Patent Appeal is not maintainable. In view of this, this appeal requires to be dismissed.

In the result, Letters Patent Appeal is dismissed with costs.

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